

**Executive Summary – Enforcement Matter – Case No. 50068**  
**Jose G. Nieto dba Nietos Service Station 1**  
**RN102887171**  
**Docket No. 2015-0226-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Nietos Service Station 1, 1021 Hooks Avenue, Donna, Hidalgo County

**Type of Operation:**

Service station with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** May 15, 2015

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,105

**Amount Deferred for Expedited Settlement:** \$1,821

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$214

**Total Due to General Revenue:** \$7,070

Payment Plan: 35 payments of \$202 each

**Supplemental Environmental Project ("SEP") Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** December 11, 2014

**Date(s) of NOE(s):** January 30, 2015

**Executive Summary – Enforcement Matter – Case No. 50068**  
**Jose G. Nieto dba Nietos Service Station 1**  
**RN102887171**  
**Docket No. 2015-0226-PST-E**

***Violation Information***

1. Failed to ensure that a cathodic protection system is designed, installed, operated, and maintained in a manner that will ensure that corrosion protection is continuously provided to all metal components of the underground storage tanks ("USTs") system. Specifically, the rectifier was not functioning properly and the anodes had been depleted [30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d)].
2. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days:
  - i. Repair the corrosion protection system and test the system; and
  - ii. Begin conducting inspections of the impressed current cathodic protection system.
- b. Within 45 days, submit written certification to demonstrate compliance with a.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 50068**

**Jose G. Nieto dba Nietos Service Station 1**

**RN102887171**

**Docket No. 2015-0226-PST-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** James Baldwin, Enforcement Division,  
Enforcement Team 7, MC 128, (512) 239-1337; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** Jose Nieto, Owner, Nietos Service Station 1, P.O. Box 160, Elsa, Texas  
78543

**Respondent's Attorney:** N/A





## Penalty Calculation Worksheet (PCW)

TCEQ

<b>DATES</b>	<b>Assigned</b>	2-Feb-2015	<b>Screening</b>	6-Feb-2015	<b>EPA Due</b>	
	<b>PCW</b>	9-Feb-2015				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Jose G. Nieto dba Nietos Service Station 1				
<b>Reg. Ent. Ref. No.</b>	RN102887171				
<b>Facility/Site Region</b>	15-Harlingen		<b>Major/Minor Source</b>	Minor	

## CASE INFORMATION

<b>Enf./Case ID No.</b>	50068	<b>No. of Violations</b>	2
<b>Docket No.</b>	2015-0226-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	James Baldwin
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$7,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>		<b>20.0%</b>	Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,500</b>	
Notes	Enhancement for one agreed order with denial of liability.					
<b>Culpability</b>	No	<b>0.0%</b>	Enhancement	<b>Subtotal 4</b>	<b>\$0</b>	
Notes	The Respondent does not meet the culpability criteria.					
<b>Good Faith Effort to Comply Total Adjustments</b>					<b>Subtotal 5</b>	<b>\$0</b>
<b>Economic Benefit</b>		<b>0.0%</b>	Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>	
Total EB Amounts		\$462	*Capped at the Total EB \$ Amount			
Estimated Cost of Compliance		\$5,850				

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,000
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## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

	1.2%	<b>Adjustment</b>	\$105
<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.		
		<b>Final Penalty Amount</b>	\$9,105

## STATUTORY LIMIT ADJUSTMENT

		<b>Final Assessed Penalty</b>	\$9,105
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## DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

	20.0%	Reduction	<b>Adjustment</b>	-\$1,821
<b>Notes</b>	Deferral offered for expedited settlement.			

<b>PAYABLE PENALTY</b>	\$7,284
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Screening Date 6-Feb-2015

Docket No. 2015-0226-PST-E

PCW

Respondent Jose G. Nieto dba Nietos Service Station 1

Policy Revision 4 (April 2014)

Case ID No. 50068

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887171

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement for one agreed order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 20%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 20%

Screening Date 6-Feb-2015

Docket No. 2015-0226-PST-E

PCW

Respondent Jose G. Nieto dba Nietos Service Station 1

Policy Revision 4 (April 2014)

Case ID No. 50068

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887171

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(2) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to ensure that a cathodic protection system is designed, installed, operated, and maintained in a manner that will ensure that corrosion protection is continuously provided to all metal components of the underground storage tank system. Specifically, the rectifier was not functioning properly and the anodes were depleted.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

57 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended based on the documentation of the violation during the December 11, 2014 investigation to the February 6, 2015 screening date.

## Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$356

Violation Final Penalty Total \$4,553

This violation Final Assessed Penalty (adjusted for limits) \$4,553

# Economic Benefit Worksheet

Respondent Jose G. Nieto dba Nietos Service Station 1  
 Case ID No. 50068  
 Reg. Ent. Reference No. RN102887171  
 Media Petroleum Storage Tank  
 Violation No. 1

Percent Interest 5.0  
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
 Item Description No commas or \$

## Delayed Costs

Equipment	\$5,750	11-Dec-2014	30-Oct-2015	0.88	\$17	\$339	\$356
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair and test the corrosion protection system. The date required is the date of the investigation and the final date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,750

TOTAL

\$356



Screening Date 6-Feb-2015

Docket No. 2015-0226-PST-E

PCW

Respondent Jose G. Nieto dba Nietos Service Station 1

Case ID No. 50068

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102887171

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2)(C) and Tex. Water Code § 26.3475(d)

## Violation Description

Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

57 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended based on the documentation of the violation during the December 11, 2014 investigation to the February 6, 2015 screening date.

## Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$4,553

This violation Final Assessed Penalty (adjusted for limits) \$4,553

# Economic Benefit Worksheet

Respondent Jose G. Nieto dba Nietos Service Station 1  
 Case ID No. 50068  
 Reg. Ent. Reference No. RN102887171  
 Media Petroleum Storage Tank  
 Violation No. 2

Percent Interest 5.0  
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
 Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	11-Oct-2014	11-Dec-2014	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the rectifier and other components of the cathodic protection system. The date required is 60 days before the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$100

TOTAL

\$105

The TCEQ is committed to accessibility.  
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN600745939, RN102887171, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

**Customer, Respondent, or Owner/Operator:** CN600745939, Nieto, Jose G      **Classification:** SATISFACTORY      **Rating:** 7.50

**Regulated Entity:** RN102887171, Nietos Service Station 1      **Classification:** SATISFACTORY      **Rating:** 15.00

**Complexity Points:** 3      **Repeat Violator:** NO

**CH Group:** 01 - Gas Stations with convenience Stores and other Gas Stations

**Location:** 1021 Hooks Avenue, Donna, Hidalgo County, Texas

**TCEQ Region:** REGION 15 - HARLINGEN

**ID Number(s):**  
**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 35985

**Compliance History Period:** September 01, 2009 to August 31, 2014      **Rating Year:** 2014      **Rating Date:** 09/01/2014

**Date Compliance History Report Prepared:** February 05, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** February 05, 2010 to February 05, 2015

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** James Baldwin      **Phone:** (512) 239-1337

### Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

### Components (Multimedia) for the Site Are Listed in Sections A - J

#### **A. Final Orders, court judgments, and consent decrees:**

- 1 Effective Date: 03/15/2013      ADMINORDER 2012-0366-PST-E (1660 Order-Agreed Order With Denial)  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)  
2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  
30 TAC Chapter 334, SubChapter C 334.50(b)(2)

Description: Failure to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failure to provide proper release detection for the piping associated with the UST system.

#### **3. Criminal convictions:**

N/A

#### **2. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JOSE G. NIETO DBA NIETOS  
SERVICE STATION 1  
RN102887171**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2015-0226-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jose G. Nieto dba Nietos Service Station 1 ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a service station with retail sales of gasoline at 1021 Hooks Avenue in Donna, Hidalgo County, Texas (the "Facility").
2. The Respondent's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 4, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand One Hundred Five Dollars (\$9,105) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Fourteen Dollars (\$214) of

the administrative penalty and One Thousand Eight Hundred Twenty-One Dollars (\$1,821) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all the requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Seventy Dollars (\$7,070) of the administrative penalty shall be payable in 35 monthly installments of Two Hundred Two Dollars (\$202) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to ensure that a cathodic protection system is designed, installed, operated, and maintained in a manner that will ensure that corrosion protection is continuously provided to all metal components of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d), as documented during an

investigation conducted on December 11, 2014. Specifically, the rectifier was not functioning properly and the anodes had been depleted.

2. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on December 11, 2014.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jose G. Nieto dba Nietos Service Station 1, Docket No. 2015-0226-PST-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Repair the corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
    - ii. Begin conducting inspections of the impressed current cathodic protection system, in accordance with 30 TEX. ADMIN CODE § 334.49.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance

with Ordering Provision Nos. 2.a.i and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.



6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Pamela Mancera*  
For the Executive Director

6/1/15  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Jose G. Nieto*  
Signature

4-8-12  
Date

Jose G. Nieto dba Nietos Service Station 1  
Name (Printed or typed)  
Authorized Representative of  
Jose G. Nieto dba Nietos Service Station 1

Owner  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.